

**5**

Michael L. Farley, SBN 76368  
Donald L. Mabry, SBN 187750  
dmabry@farleylawfirm.com  
FARLEY LAW FIRM  
108 West Center Avenue  
Visalia, California 93291

Telephone: (559) 738-5975  
Facsimile: (559) 732-2305

Attorneys for Plaintiff (Movant),  
REBECCA ZULIM, M.D.

**IN THE UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**FRESNO DIVISION**

In re

TULARE LOCAL HEALTHCARE  
DISTRICT dba TULARE REGIONAL  
MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897  
Address: 869 N. Cherry Street  
Tulare, CA 93274

Case No. 17-13797

DCN: DLM-2

Chapter 9

**REPLY TO OPPOSITION TO MOTION  
FOR RELIEF FROM AUTOMATIC STAY  
UNDER 11 U.S.C. § 362**

Date: April 12, 2018  
Time: 9:30 a.m.  
Place: 2500 Tulare Street, 5<sup>th</sup> Floor  
Fresno, CA 93721  
Courtroom: 13  
Department: B  
Judge: Hon. René Lastreto II

**INTRODUCTION**

TRMC ("Debtor") raises several arguments in opposition to the motion by Rebecca Zulim, M.D. ("Movant") for relief from the automatic stay. As discussed below, Debtor's arguments lack merit and Movant should be permitted to prosecute her state court action against Debtor, and others, arising out of alleged discriminatory and retaliatory conduct by Debtor, and

1 others, in violation of “Whistleblower” protections under California Health & Safety Code §  
2 1278.5.

### 3 ARGUMENT

4 **I. Movant may obtain retroactive *annulment* of the stay, which would allow her**  
5 **to proceed with her state court action even if the DFEH complaint and right-**  
6 **to-sue letter were initially void.**

7 One of Debtor’s central arguments is that the DFEH complaint was filed, and the right-to-  
8 sue letter was obtained, in violation of the stay, and are therefore void (not just voidable). Debtor  
9 asserts this should end the matter.

10 However, Ninth Circuit authority is clear that the stay may be annulled retroactively,  
11 thereby validating the acts and allowing them to remain in effect. 11 USC § 362(d); *In re Cruz*,  
12 516 B.R. 594, 603 (9th Cir. 2014); *In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992); *In re*  
13 *National Environmental Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir. 1997).

14 Here, there is good cause to retroactively annul the stay because contrary to the  
15 impression Debtor leaves with the court, Debtor is just one of *several* respondents named in the  
16 DFEH complaint. Regardless of how the bankruptcy court rules on this motion, Movant will be  
17 proceeding with her state court action against at least the other respondents, none of which are  
18 subject to this court’s jurisdiction.

19 The key question is whether the bankruptcy court is going to force Movant—as Debtor  
20 would urge—to split her action and litigate her discrimination and Whistleblower claims against  
21 Debtor in the bankruptcy proceeding and litigate the exact same claims against the other  
22 respondents in a state court action? Contrary to Debtor’s assertion, this makes no sense from a  
23 judicial economy perspective.

24 Moreover, it is anticipated that once Movant proceeds in state court against the other  
25 respondents, one or more of them will seek to assert indemnification or contribution claims  
26 against Debtor, and will in turn seek relief from the stay in the bankruptcy court for that purpose.  
27 Movant sought relief from the bankruptcy court precisely because she desires to pursue complete  
28

1 relief from *all* respondents in the same forum. Pursuing the action in state court against all  
2 respondents (including Debtor) will promote judicial economy, and, further, will eliminate the  
3 possibility of incomplete or inconsistent relief as between all concerned parties.

4 **II. Contrary to Debtor's assertion, "pending litigation" is not a prerequisite for**  
5 **obtaining relief from the stay to proceed in a non-bankruptcy forum.**

6 *In re Kronemyer*, 405 B.R. 915 (9th Cir. 2009), relied upon by Debtor, does not stand for  
7 the broad proposition that relief from the stay requires pending litigation to apply the "*Curtis*"  
8 factors, and that case should be confined to its own facts.

9 To the contrary, Ninth Circuit case law is clear that relief from the stay is available not  
10 only as to claims pending in a non-bankruptcy forum, but also those that were expressly brought  
11 to the bankruptcy court's attention during the relief from stay proceedings. *In re Wardrobe*, 559  
12 F.3d 932, 937 (9th Cir. 2009); see also, The Rutter Group California Practice Guide: *Bankruptcy*  
13 § 8:1145.1 (2017). As the court explained in *In re Wardrobe*:

15 Limiting the relief available to a creditor to that which was currently alleged in a  
16 pending complaint *or specifically requested in the motion for relief* forces  
17 creditors to disclose the causes of action they intend to pursue and ensures that the  
18 bankruptcy court is fully apprised of the nature of the lawsuit so that the court can  
19 determine whether cause exists to grant relief from the stay. *See* 11 U.S.C. §  
20 362(d)(1) (providing that "the court shall grant relief from the stay ... for cause").  
This protects the debtor, and other creditors, from unforeseen causes of action that  
could result in non-dischargeable judgments and furthers the purpose of the  
automatic stay.

21 *Id.*, 559 F.3d at 936-937 (emphasis supplied).

22 Here, Movant apprises the bankruptcy court not only of the "nature of the lawsuit" she  
23 intends to pursue in state court against Debtor and others, but lays out in great detail the causes of  
24 action and factual bases of her claims in her DFEH complaint. [See Docket # 454; Exhibits to  
25 Declaration . . . In Support of Motion For Relief From Automatic Stay, pages 9-19]. Thus,  
26 Movant has satisfied the requirement in *In re Wardrobe*, and is entitled to relief from the stay.

27 Moreover, Debtor's argument fails because it ignores the practical reality that—as  
28 mentioned above—Movant will be proceeding in state court against at least the other respondents



1 irrespective of how the bankruptcy court rules on this motion. This is not a case, therefore, in  
2 which the ability to proceed with a state court action at all hinges upon the bankruptcy court's  
3 decision on the motion for relief from stay. Therefore, it makes sense for the court to apply the  
4 *Curtis* factors substantively to Movant's request for relief from the stay.

5 **III. The *Curtis* factors heavily favor allowing Movant's claims against Debtor to**  
6 **be litigated in state court.**

7 Movant cites several *Curtis* factors that weigh in favor of relief from the stay. [See Docket  
8 #450; Motion for Relief From Automatic Stay, paragraphs 9-10]. As noted therein, foremost is  
9 that Debtor's potential liability is covered by insurance.

10 Contrary to Debtor's assertion, it is *not* Movant's burden to "establish that [Debtor's]  
11 insurance coverage is sufficient to satisfy all creditors with claims that may be paid under the  
12 policy." [Opposition, page 8:19-20]. A moving party is only required to make a *prima facie* case  
13 for relief from the bankruptcy stay, and the burden then shifts to the debtor to overcome that  
14 showing. 11 U.S.C. § 362(g)(2). Debtor concedes it has insurance, but has presented no evidence  
15 to the court that the policy would be insufficient to cover Movant's claims. Moreover, Movant  
16 would have no way of knowing how many claims against the policy have been made thus far, but  
17 Debtor does know that. Yet, Debtor failed to present any evidence to the court on that issue.

18 Debtor also raises the issue of its \$100,000 insurance deductible as evidence that Debtor's  
19 assets would be depleted if Movant successfully obtains a state court judgment against it. But this  
20 is no real impediment to granting relief from the stay because, like other parties who have sought  
21 relief from the stay to pursue Debtor's insurance, Movant is prepared to waive any right to  
22 payment from Debtor in satisfaction of its deductible and agrees to be paid only from insurance  
23 proceeds—as a condition for obtaining relief from the stay.

24 Debtor asserts that other *Curtis* factors favor denying relief from the stay, such as judicial  
25 expediency, that the underlying matter is not ready for prompt determination or trial, and that it  
26 will interfere with the bankruptcy case. These factors, however, actually *favor* granting relief  
27 from the stay. The issue of judicial expediency was addressed above in that full and complete  
28

1 relief between all parties concerned can be had only in a state court action. To keep Movant's  
2 claims in the bankruptcy court will result in splitting the action and risk incomplete or  
3 inconsistent relief.

4 Further, it is precisely *because* the matter is not ready for prompt determination or trial  
5 that the entire litigation should proceed in state court against all respondents named in Movant's  
6 DFEH complaint. State courts routinely manage litigation of this type and have the capacity to  
7 deal with them from their inception. Finally, it is difficult to fathom how litigating the entire  
8 matter in state court will interfere with the bankruptcy proceeding. The exact opposite is true.

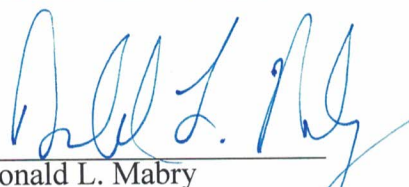
### 9 CONCLUSION

10 Movant has met her burden of establishing good cause for relief from the stay. By  
11 granting retroactive annulment of the stay as to Movant's claims, her discrimination and  
12 Whistleblower claims can proceed against *all* respondents (including Debtor) in a state court  
13 action. Contrary to Debtor's arguments in opposition, granting Movant's requested relief would  
14 have the *least* impact on the adjustment of Debtor's assets, the *least* impact on the bankruptcy  
15 proceeding itself, and would promote judicial economy the *most*.

16 DATED: April 5, 2018

FARLEY LAW FIRM

17  
18  
19 By

  
Donald L. Mabry  
Attorneys for Plaintiff (Movant),  
REBECCA ZULIM, M.D.